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DISTRICT OF COLUMBIA COURT OF APPEALS

No. 81-900

ISIDORO RODRIGUEZ, Petitioner,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF  
EMPLOYMENT SERVICES, Respondent.

Petition for Review of Decision of the  
District of Columbia Department  
of Employment Services

(Argued March 10, 1982

Decided August, 5, 1982)

BEFORE: FERREN, PRYOR, and BELSON, Associate  
Judges.

MEMORANDUM OPINION AND JUDGMENT

Petitioner seeks review of a final Decision of the Acting Director of the District of Columbia Department of Employment Services (the Department) ordering that petitioner be disqualified from receiving unemployment compensation benefits for a period of two years on the ground that petitioner committed fraud in representing his employment status to the Department.<sup>1</sup> We affirm.

In his petition for review, petitioner alleged that his request to the Department for record material necessary to prepare his

appeal of the Appeals Examiner's decision to the Acting Director was not complied with by the agency in accordance with D.C. Code 1973, § 1-1509 (c).<sup>2</sup> We found that the record before us was insufficient to permit a determination of whether the Department had complied with petitioner's request. Accordingly, we ordered the record remanded to the Department in order that evidence might be taken and a finding made as to whether the Department had "reasonably and adequately" complied with petitioner's request for record material.<sup>3</sup>

Pursuant to the order, the Department took evidence, including the sworn testimony of Department employees that petitioner's requests for record material had been complied with in accordance with the provisions of § 1-1509(c). Petitioner offered no evidence in support of his contention that he had been denied the material, and voluntarily absented himself from the hearing at which testimony was taken.

The Acting Director's Finding, issued pursuant to this court's order, was that petitioner's request for record material was reasonably and adequately complied with. We conclude that the record evidence supports the Acting Director's finding on this issue. We further conclude that there is substantial record evidence to support a finding that petitioner committed fraud upon the Department, and affirm the disqualification imposed by the Acting Director pursuant to D.C. Code 1973, § 46-319(e).<sup>4</sup>

Petitioner is an attorney who specializes in personnel and unemployment compensation law. He was employed by the District of Columbia Government, Office of Personnel, as an "Expert Consultant/Legal Counsel" from April, 1979 to December, 1979. On January 7, 1980, petitioner filed for unemployment compensation benefits. He claimed benefits for the calendar weeks ending February 9, through March 22, and benefits were paid to him for all seven weeks. In accordance with

Department regulations, petitioner certified that he was not employed during each of the weeks for which he claimed benefits.

On February 4, 1980, petitioner began performing services for the Department of Employment Services, Office of Employee Appeals. On that date the Office was in an organizational stage and funding for it had not been approved. The Chairperson of the Office of Employee appeals testified in hearings before the Department that petitioner started working for that office as a volunteer and that petitioner did not know "for some time" if or when he would get on the payroll.

On February 20, 1980, petitioner signed a notarized appointment affidavit on which the date of his appointment to a position with the Office of Employee Appeals was designated as February 4, 1980. The record is not clear as to when petitioner first received payment for his services, but petitioner conceded that as of March 18, 1980, he had received a pay stub

indicating that he was being paid as an employee of the Office of Employee Appeals.

In accordance with Department procedure, petitioner's employer, the District of Columbia Office of Personnel, was notified that petitioner was claiming benefits. On April 1, 1980, a memorandum was addressed to the Department by the employer requesting a review of petitioner's eligibility for benefits and seeking the imposition of a disqualification for fraud. On the same date, petitioner informed the Department of a possible overpayment and submitted a check in the amount of \$1,000 to be applied thereon pending determination of overpayment by the Department.

A Claims Deputy found that there had been overpayment in the amount of \$1,267 in that petitioner received benefits while employed. The Deputy declined to impose a disqualification for fraud pursuant to section 46-319(e) after concluding that petitioner did not misrepresent willfully his employment status while claiming benefits. The Claims Deputy

based his conclusion in part on his own belief that "a person knowledgeable of the laws [would not] jeopardize [not only] his employment and profession but his future as a lawyer to obtain an extra \$181 per week illegally, when his annual average income is presently over \$40,000.

Petitioner appealed the determination of overpayment and the District of Columbia appealed the determination of no disqualification for fraud. Hearings were held before the Appeals Examiner between July and December, 1980. On February 20, 1981, the Appeals Examiner issued his decision that the prior determinations of overpayment and no fraud be affirmed. The Appeals Examiner noted his reliance upon the opinion of the Claims Deputy with respect to the fraud issue. Petitioner and the District of Columbia appealed the Appeals Examiner's decision to the Acting Director of the Department. On July 17, 1981, the Acting Director issued a Final Decision affirming the Appeals Examiner on the issue of

overpayment but reversing on the issue of fraud. The Acting Director concluded that application of the subjective test set forth in Jacobs v. District Unemployment Compensation Board, D.C.App., 382 A.2d 282 (1978) to the facts of the instant case compelled a determination that petitioner knowingly misrepresented his employment status and committed fraud upon the Department. We sustain that conclusion.

We have held that the elements of a section 46-319(e) violation essentially track the common law requirements for proof of fraud, those elements being, false representation of a material fact or failure to disclose a material fact, knowledge of the falsity, intention to induce reliance upon the misrepresentation, and actual reliance. Id at 286. Whether a claimant has knowledge of the falsity at issue is to be determined by reference to a subjective standard, i.e., the state of mind of the claimant rather than that of a reasonable person in the position of the



claimant is to be considered. Id. at 287. The Appeals Examiner's reference to the Claims Deputy's opinion concerning the motives of an individual in petitioner's position indicates that the Appeals Examiner incorrectly applied a reasonable' person test, rather than the subjective test mandated by Jacobs.

In addition, there is sufficient record evidence to sustain the Acting Director's finding that petitioner knowingly made false statements concerning his employment status. The Acting Director noted that appellant was an attorney experienced in personnel matters and familiar with all District of Columbia unemployment compensation procedures. In other words, he is presumed to be aware of the legal requirement in this jurisdiction that to be eligible for compensation under the District of Columbia Unemployment Compensation Act, an individual must not have performed any services or received any earnings during the period benefits are claimed. Dyer v. District of Columbia Unemployment Compensation Board,



D.C.App., 392 A.2d 1, 3 (1978). He is also presumed to be aware of the statutory definition of "earnings" as "all remuneration payable for personal services." D.C. Code 1973, § 46-301(d) [emphasis added]. Petitioner signed an appointment affidavit on February 20, 1980, indicating that his appointment was effective February 4, 1980. He thus is chargeable as of February 20, with knowledge that he was employed and had earnings due him beginning February 4, 1980. Moreover, at the latest by March 18, 1980, petitioner received a pay stub indicating he was being paid as an employee of the Office of Employee Appeals. Nevertheless, petitioner certified that he was unemployed through the period ending March 22, 1980 and accepted benefits for that period.

Petitioner's explanation that he believed payments he received in March, 1980 were in payment of a claim against his former employer, the Office of Personnel, reasonably could have been found unconvincing in light of

the complete lack of evidence that petitioner was ever notified that the claim was settled or that he was receiving payment on the claim.

In addition to alleging that there is insufficient record evidence to support the Acting Director's finding of fraud, petitioner asserts that the Department is without jurisdiction to adjudicate unemployment compensation claims; that proceedings before the Department were not conducted in accordance with the due process requirements of the Fifth Amendment and the provisions of the District of Columbia Administrative Procedure Act; and that the Appeals Examiner was not impartial, but was subject to the control of unnamed "higher authorities." We find these arguments unpersuasive. Accordingly, it is

ORDERED and ADJUDGED that the Final Decision of the District of Columbia Depart-

ment of Employment Services be, and it hereby is, affirmed.

FOR THE COURT

RICHARD B. HOFFMAN  
Acting Clerk of the  
Court

FOOTNOTES:

- <sup>1</sup>The Acting Director's Final Decision also affirmed the Appeals Examiner's finding that petitioner had been overpaid by the Department in that he received benefits while employed. Although petitioner seeks review of the Acting Director's determinations with respect to both overpayment and fraud, the record indicates that petitioner conceded overpayment in a hearing before the agency. We consider therefore that the overpayment issue is not before us.
- <sup>2</sup>D.C. Code 1973, § 1-1509(c) provides that the agency shall maintain an official record in each contested case. Record material must be made available to parties to the case upon request. See Quick v. Department of Motor Vehicles, D.C.App., 311 A.2d 319 (1975).
- <sup>3</sup>Order dated March 10, 1982.
- <sup>4</sup>D.C. Code 1973, § 46-319(e) provides:

Any person who the Board finds has made a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact to obtain or increase any benefit under this chapter may be disqualified for benefits for all or part of the remainder of such benefit year and for a period of not more than one year commencing with the end of such benefit year...

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DISTRICT OF COLUMBIA COURT OF APPEALS  
500 Indiana Avenue, N.W.  
Washington, D.C. 20001  
(202) 638-7113

No. 81-900

October 5, 1982

ISIDORO RODRIGUEZ,

Petitioner,

v.

DISTRICT OF COLUMBIA  
DEPARTMENT OF EMPLOYMENT  
SERVICES

Respondent,

BEFORE: Newman, Chief Judge; Kelly, Kern,  
Nebeker, Mack, Ferren, Pryor, Belson, and  
Terry, Associate Judges.

O R D E R

On consideration of petitioner's petition  
for rehearing en banc, and it appearing that  
no judge of this court has called for a vote  
thereon, it is

ORDERED that petitioner's petition is  
denied.

PER CURIAM

IN THE DISTRICT OF COLUMBIA  
COURT OF APPEALS

ISIDORO RODRIGUEZ,  
Petitioner,

v.

File No. 81-900

DISTRICT OF  
COLUMBIA DEPART-  
MENT OF EMPLOYMENT  
SERVICES,  
Respondent

Filed October 18,  
1982

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NOTICE OF APPEAL TO THE

SUPREME COURT OF THE

UNITED STATES

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Notice is hereby given that Petitioner Isidoro Rodriguez, hereby appeal's to the Supreme Court of the United States the entire judgment and decision of the District of Columbia Court of Appeals in the above case decided August 5, 1982, and as to which a Petition for Rehearing En Banc was denied on October 5, 1982.

This appeal is taken pursuant to 28 USC § 1257(1).

ISIDORO RODRIGUEZ,  
PETITIONER

PROOF OF SERVICE

This is to certify that on the 18 day of October, 1982, I personally served this Notice of Appeal to the Supreme Court of the United States upon Ms. Grace L. Rosner, General Counsel, District of Columbia Department of Employment Services, 500 C Street, Room 603, Washington, D.C. 20001.

ISIDORO RODRIGUEZ,  
PETITIONER

District of Columbia, ss:

Subscribed and sworn to before me, Angela C. Granger, a Notary Public on 18 October 1982.

CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED

Article I, Section 8, Clause 17, United States Constitution:

The Congress shall have Power...To exercise exclusive Legislation in all Cases whatsoever, over such District...as may, become the Seat of the Government of the United States,....

Article I, Section 10, United States Constitution:

No State shall...pass any...ex post facto law,....

First Amendment, United States Constitution:

Congress shall make no law respecting...;or the right of the people...to petition the Government for a redress of grievances.

Fifth Amendment, United States Constitution:

No person...shall be deprived of life, liberty, or property without due process of law;....

District of Columbia Self-Government and Government Reorganization Act, Pub. L. No. 93-198, 87 STAT. 774(1973)

TITLE I  
SHORT TITLE, PURPOSE, AND DEFINITIONS

SHORT TITLE

Section 101 at 87 STAT. 776, provides:

This Act may be cited as the "District of Columbia Self-Government and Government Reorganization Act".



## STATEMENT OF PURPOSE

Section 102(a) at 87 STAT. 777, provides:

Subject to the retention by Congress of the ultimate legislative authority over the Nation's Capital granted by article I, section 8, of the Constitution, the intent of Congress is to delegate certain legislative powers to the government of the District of Columbia;...; and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.

## DEFINITIONS

Section 103 at 87 STAT. 777, provides:

For the purpose of this Act...

(7) The term "act" includes any legislation passed by the Council, except where the term "Act" is used to refer to this Act of other Acts of Congress herein specified.

(12) The term "publish" and "publication", unless otherwise specifically provided herein, mean publication in a newspaper of general circulation in the District.

(15) The term "budget" means the entire request for appropriations and loan or spending authority for all activities of all agencies of the district financed from all existing or proposed resources and shall include both operating and capital expenditures.

TITLE III  
DISTRICT CHARTER PREAMBLE, LEGISLATIVE  
POWER, AND CHARTER AMENDING PROCEDURE

LEGISLATIVE POWER

Section 302 at 87 STAT. 784, provides:

Except as provided in section 601, 602, and 603, the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and provisions of this Act....

CHARTER AMENDING PROCEDURE

Section 303, (a) at 87 STAT. 784, provides:

The charter set forth in title IV (including any provision of law amended by such title), except sections 401(a) and 421(a), and part C of such title, may be amended by an act passed by the Council and ratified by a majority of the registered qualified electors of the District voting in the referendum held for such ratification...

TITLE IV--THE DISTRICT CHARTER

Part A--The Council

Subpart 1-- Creation of the Council

POWERS OF THE COUNCIL

Section 404 at 87 STAT. 787, provides:

(a) Subject to the limitations specified in title VI of this Act, the legislative power granted to the District by this Act is vested in and shall be exercised by the Council in accordance with this Act...

(b) The Council shall have authority to create, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities of any such office, agency, department, or instrumentality.

(d) Every act shall be published and codified upon becoming law as the Council may direct.

Subpart 2--Organization and  
Procedure of the Council

ACTS, RESOLUTIONS,  
AND REQUIREMENTS FOR QUORUM

Section 412(a) at 87 STAT. 788, provides:

The Council, to discharge the powers and duties imposed herein, shall pass acts.... The Council shall use acts for all legislative purposes....Each proposed act shall be read twice in substantially the same form.... Resolutions shall be used to express simple determinations, decisions, or directives of the Council of a special or temporary character.

Part B--THE MAYOR  
POWERS AND DUTIES

Section 422 at 87 STAT. 790, provides:

The executive power of the District shall be vested in the Mayor who shall be the chief executive officer of the District government. In addition, except as otherwise provided in this Act, all functions granted to or vested in the Commissioner of the District of Columbia, as established under Reorganization Plan Number 3 of 1967, shall be carried out by the Mayor in accordance with this Act. The mayor shall be responsible for the

proper administration of the affairs of the District coming under his jurisdiction or control, including but not limited to the following powers, duties, and functions:

(2) The Mayor shall administer all laws relating to the appointment, promotion, discipline, separation, and other conditions of employment of personnel in the office of the Mayor, personnel in executive departments of the District, and members of boards, commissions, and other agencies, who, under laws in effect on the date immediately preceding the effective date of section 711(a) of this Act, were subject to appointment and removal by the Commissioner of the District of Columbia. All actions affecting such personnel and such members shall until such time as legislation is enacted by the Council superseding such laws and establishing a permanent District government merit system, pursuant to paragraph (3), continue to be subject to the provisions of Acts of Congress relating to the appointment, promotion, discipline, separation, and other conditions of employment applicable to officers and employees of the District government,....

(3) The Mayor shall administer the personnel functions of the District covering employees of all District departments, boards, commissions, offices and agencies, except as otherwise provided by this Act. Personnel legislation enacted by Congress prior to or after the effective date of this section, including, without limitation, legislation relating to appointments, promotions, discipline, separation, pay, unemployment compensation,...applicable to employees of the District government..., shall continue to be applicable until such time as the Council shall pursuant to this section provide, for

coverage under a District government merit system.

(11) The Mayor is authorized to issue and enforce administrative orders, not inconsistent with this or any other Act of the Congress or any act of the Council, as are necessary to carry out his functions and duties.

(12) The Mayor may reorganize the offices, agencies, and other entities within the executive branch of the government of the District by submitting to the Council a detailed plan of such reorganization. Such a reorganization plan shall be valid only if the Council does not adopt..., a resolution disapproving such reorganization.

#### **PART D--DISTRICT BUDGET AND FINANCIAL MANAGEMENT**

##### **Subpart 1--Budget and Financial Management**

##### **ENACTMENT OF APPROPRIATIONS BY CONGRESS**

Section 446 at 87 STAT. 801, provides:

....No amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act....

##### **CONSISTENCY OF BUDGET, ACCOUNTING, AND PERSONNEL SYSTEMS**

Section 447 at 87 STAT. 801, provides:

The Mayor shall implement appropriate procedures to insure that budget, accounting, and personnel control systems and structures are synchronized for budget and control purposes on a continuing basis. No employee shall be hired on a

full-time or part-time basis unless such position is authorized by Act of Congress. Employees shall be assigned in accordance with the program, organization, and fund categories specified in the Act of Congress authorizing such position. Hiring of temporary employees and temporary employee transfers among programs shall be consistent with applicable Acts of Congress and reprogramming procedures to insure that costs are accurately associated with programs and sources of funding.

# TITLE VI--RESERVATION OF CONGRESSIONAL AUTHORITY

## LIMITATIONS ON THE COUNCIL

Section 602(a)(3) at 87 STAT. 813, provides:

The Council shall have no authority to pass any act contrary to the provisions of this act Except as specifically provided in this Act, or to...(3) enact any act, or enact any act to amend or repeal any Act of Congress,...which is not restricted in its application exclusively in or to the District;....

## BUDGET PROCESS;--

Section 603(a) at 87 STAT. 814, provides:

Nothing in this Act shall be construed as making any change in existing law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the President, the Federal Office of Management and Budget, and the Comptroller General of the United States in the preparation, review, submission, examination, authorization, and appropriation of the total budget of the District of Columbia government.



**TITLE VII--REFERENDUM;  
SUCCESSION IN GOVERNMENT;  
TEMPORARY PROVISIONS; MISCELLANEOUS;  
AMENDMENTS TO DISTRICT OF COLUMBIA  
ELECTION ACT;  
RULES OF CONSTRUCTION; AND EFFECTIVE DATES**

**Part B--Succession in Government**

**ABOLISHMENT OF EXISTING GOVERNMENT  
AND TRANSFER OF FUNCTION**

**Section 711 at 87 STAT. 818, provides:**

The District of Columbia Council,...and the office of the Commissioner of the District of Columbia..., as established by Reorganization Plan Numbered 3 of 1967 are abolished as of noon January 2, 1975....

**CERTAIN DELEGATED FUNCTIONS AND FUNCTIONS  
OF CERTAIN AGENCIES**

**Section 712(c) at 87 STAT. 819, provides:**

No function of the District of Columbia Council (established under Reorganization Plan Number 3 of 1967) or of the Commissioner of the District of Columbia which such District of Columbia or Commissioner has delegated to an officer, employee, or agency (including any body of or under such agency)...shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting.



EXISTING STATUTES, REGULATIONS  
AND OTHER ACTIONS

Section 714(c) at 87 STAT. 819, provides:

Unless otherwise specifically provided in this Act, nothing contained in this Act shall be construed as affecting the applicability to the District government of personnel legislation relating to the District government until such time as the Council may otherwise elect to provide equal or equivalent coverage.

Part G--Effective Dates

Section 771 at 87 STAT. 836, provides:

(a) Titles I...shall take effect on the date of enactment of this Act. (December 24, 1973)

(c) Titles III and IV shall take effect January 2, 1975, if title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum. (Certification of results (approval) of charter referendum published 21 D.C. Register 651, October 15, 1974)

(d) Title VI and parts B,...of title VII shall take effect if and upon the date title IV becomes effective.